

**MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, MARCH 21, 2017
MEETING ROOM B, CLAY COUNTY COURTHOUSE**

Members Present: Chair Amos Baer, Perry Bushaw, Greg Anderson, Pamela Harper

Members Absent: Paul Krabbenhoft

Others Present: Tim Magnusson, Lynne Spaeth, Jenny Samarzja

On motion by Pamela Harper, seconded by Greg Anderson, and unanimously carried, the Board approved the agenda as written.

On motion by Pamela Harper, seconded by Perry Bushaw, and unanimously carried, the Board approved the February 28, 2017 minutes as written.

LUCAS AND KRISTIN NELSON - REQUEST FOR VARIANCE

The applicants are seeking approval of a variance to allow a reduction in the required setback for structures and septic systems from the Ordinary High Water (OHW) of Solem Lake. The current setback requirement is 150 feet from the OHW. The properties affected are Lots 6 and 7, Solem Beach Subdivision, Section 21, T137N, R44W (Tansem Twp.) in the Shoreland Special Protection (S-SP) zoning district

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board opened the public hearing.

Tim Magnussen presented a map of the property as well as the Solem Beach plat from 2004. Additionally, he furnished a site plan indicating the setback lines and the buildable area. Magnussen stated that when Solem Beach Subdivision was platted in 2004, the structure and septic setbacks were 150 feet from the Ordinary High Water level. Subsequently, in 2005 the new zoning ordinance increased the setbacks to 200 feet. Shortly thereafter there was a variance request to reduce the required setbacks on Solem Beach Subdivision back to 150 feet. That variance was granted so the structure and septic setbacks are now 150 feet throughout the subdivision. The applicant is seeking to reduce the 150-foot setback to 100 feet on Lots 6 and 7. These lots are located on a peninsula and have water located on three sides. There are currently no structures on the property.

The applicant stated that he does not want to combine the lots into a single lot. If combined it creates a parcel of 5.96 acres in size. This may or may not help with his setback issues. He has also stated that he would not be able to build the house that he is planning if the setbacks remain at 150 feet. The proposed house is 30 ft. x 50 ft. with an attached two car garage. The applicant needs to provide two sites for his onsite sewage treatment system.

The applicant, Lucas Nelson was present for questions. Nelson stated that he and his father had scouted the property and identified 7-8 pins. He assumed another pin was located in the water. He depicted on the map, where the residence would be constructed. The applicant expounded on

his reasoning not to combine the two lots, that being he could no longer subdivide any portion of his lot, should he choose to in the future.

It was discussed at length whether the setback variance would apply to both lots 7 and 8 as opposed to strictly lot 7. It was determined that whatever happens on lot 7 would impact lot 6. Lots 6 and 7 were listed on the application although the applicant's intent was primarily Lot 7.

There was ample conversation regarding the combination of the lots, buildable area and the comparison of this variance to a previously granted variance affecting Lot 10.

The Board discussed the setbacks with the applicant and the applicant is confident that the setbacks can be met.

It was asked if the applicant could begin construction within 12 months. The applicant explained he may be deployed overseas for a few months, therefore could not state for certain. It was discussed and agreed that the deadline to begin construction could be extended.

On motion by Greg Anderson, seconded by Pamela Harper, and unanimously carried, the Board closed the public hearing.

It was questioned and clarified by the applicant that he measured from the Ordinary High Water level and not the existing water line. Magnusson's map indicated measurement from the existing water edge.

Considerable discussion was held regarding Solem Lake's current height and the reason for the variance. Different scenarios were pondered regarding the structure of the lake in upcoming years and the affect it would have on the variance. It was interpreted by Jenny Samarzja that a variance is granted for a specific project and there should not be a precedence.

Inquiries were addressed with respect to the practical difficulty threshold.

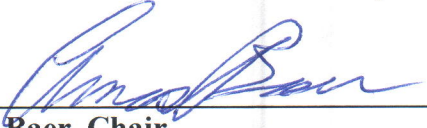
The conditions were deliberated and the Board supported an increase to 36 months for construction to commence. Furthermore, a condition was agreed upon to specify where the setback would be measured from.

On Motion by Greg Anderson, and seconded by Pamela Harper, and carried with one nay vote (Perry Bushaw), the Board of Adjustments approved the application for variance to allow a reduction in the required setback for structures and septic systems located on Lots 6 and 7 in Solem Beach Subdivision (Section 21, T137N, R44W), from the Ordinary High Water (OHW) level of Solem Lake with the following conditions/reasons:

- 1) The proposed variance is in harmony with the general purpose of the zoning district and intent of the Development Code;
- 2) The proposed variance constitutes a 33.3% reduction in the required setback;
- 3) The circumstances related to this request constitute a "practical difficulty" related to the location of the lot and the fluctuating water levels associated with Solem Lake.;
- 4) The variance would not alter the essential character of the locality.

- 5) Construction must commence within 36 months of the granting of this Variance.
- 6) The setback on Lot 6 and Lot 7 must be 100 feet from the existing water line and 120 feet from the Ordinary High Water level.

On motion by Perry Bushaw, and seconded by Greg Anderson, and unanimously carried, the meeting was adjourned at 6:40 p.m.

By: 
Amos Baer, Chair